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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 364

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WILLIAM BUNN

Petitioner

Versus

CITY OF ATLANTA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

A. T. WALDEN
STEPHENS MITCHELL
Counsel for Petitioner

SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.....

WILLIAM BUNN, PETITIONER
VS.
THE CITY OF ATLANTA

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner William Bunn shows:

On the 6th day of February 1941 the City of Atlanta served a summons on him charging him with violation of a Municipal Ordinance adopted on May 7th, 1940, by the Mayor and Council of the City of Atlanta, Georgia.

This ordinance read as follows:

> "Be it Ordained by the Mayor and General Council of the City of Atlanta that from and after the passage of this Ordinance, it shall be the duty of all owners and/or operators of taxicabs or autos for hire within the City of Atlanta to indicate on the side of vehicle whether the

taxicab or auto for hire shall be used by and shall serve white or Negro passengers. The sign shall be painted on under the owner's and operator's sign and shall be in letters not less than One Inch in Height. The sign shall read "For White Passengers Only" or "For Colored Passengers Only" as the case may be. The sign as well as the Auto for Hire or Taxi sign shall be painted on both sides of vehicle in an oil paint of contrast color of vehicle that can not be rubbed or washed off, and shall remain on car so long as the operator holds a permit and license to operate that machine.

No such taxicab or auto for hire owner or operator shall carry both white and Negro passengers in the same vehicle, but shall serve one or the other of said races to the exclusion of the other. There shall be white drivers for carrying white passengers and colored drivers for carrying colored passengers.

Any person convicted of violating this ordinance shall be subject to a fine not to exceed $100.00, or sentenced to the public works of the City of Atlanta for a period not to exceed thirty days, any part of either one or both in the discretion of the Recorder, and is also subject to having his driver's permit and license revoked by the Police Committee and General Council.

Applicants in filing their petition for permits shall state on their applications whether the taxicab or auto for hire is to be used for hauling white or colored passengers.

All ordinances and parts of ordinances in conflict with this ordinance be and the same are

hereby repealed.

Adopted by General Council May 6, 1940.
Approved May 7th, 1940.

William B. Hartsfield, Mayor."

On the 6th day of February 1941 the case of City of Atlanta vs. William Bunn came on for a trial before the Recorder of the City of Atlanta, and the following judgment was rendered by the Recorder of the City of Atlanta:

"The above entitled case came on for a hearing before me on the 6th day of February, 1941.

The defendant admitted that he had operated an automobile for hire in the City of Atlanta, that he had built up a patronage of both white and colored people and that in operating it he had not complied with the ordinance of May 7th, 1940.

The only defense offered by him was that the Ordinance of May 7th, 1940, was unconstitutional on the grounds that: It violated section 1, paragraph 2 of the Constitution of Georgia which declares "Protection to person and property is the paramount duty of government, and shall be impartial and complete," and that it violates the 14th Amendment to the Constitution of the United Saes which declares: "No Sate shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Because: (1) It deprived him of a right to solicit trade from all of the people of Atlanta, who are divided in the approximate proportion of two-thirds white and one-third colored.

(2) It was an unlawful exercise of the police power in that it attempted to confine carriers for hire to hauling and transporting passengers of one race and deprived them of the opportunity to carry passengers of another race or color.

(3) It was an attempt to deprive Negroes of the opportunity of soliciting and accepting the patronage of white people, and vice versa.

(4) It was discriminatory in that it was confined to carriers using automotive vehicles, and did not include busses, street cars or horse drawn vehicles.

The Court considered this defense, and holds that it has no merit, and finds in favor of the City of Atlanta and imposes a fine of $25.00 on the defendant together with $..... costs of this proceeding.

This 6th day of February, 1941.

A. W. Callaway
Recorder of the City of Atlanta."

This judgment states all of the material facts of the trial.

On the 7th day of February 1941, a timely and appropriate petition for the writ of certiorari was presented to Fulton Superior Court, in accordance with the rules of practice and procedure in such cases, and on the same day, an order giving sanction to said petition and ordering the writ of certiorari to issue was granted by said court.

On the 10th day of April 1941 the certiorari came on for a hearing in Fulton Superior Court, and after argument the certiorari was overruled, the order overruling same reading as follows:

"William Bunn vs. City of Atlanta } No. 133, 112 FULTON SUPERIOR COURT.

The above stated certiorari involves the constitutionality of a city ordinance regulating the use of the streets of the city for the operation of motor vehicles for the carriage of passengers. The purpose of the ordinance is to preserve peace and prevent disorder upon the streets and thoroughfares of the city.

Viewing the ordinance in that respect, and considering the charge to be a violation of that part of the ordinance which related to signs on the cars and the uses to be made of the cars, I am constrained to uphold the ordinance as being within the police power of the city. The question of the race of drivers was not involved in this case.

Wherefore, the within certiorari is overruled and

dismissed, judgment against plaintiff in certiorari for the costs of the case.

This the 10th day of April, 1941.

John D. Humphries
Judge Superior Court, Atlanta Circuit."

Within the time prescribed by law your petitioner filed his bill of exceptions to the overruling of the certiorari to the Supreme Court of Georgia. In the bill of exceptions the nature of the case and the errors complained of were plainly, fully and distinctly set forth and all material necessary to a clear understanding of the case, together with the petition for writ of certiorari, and the writ of certiorari, and the order of the court overruling the certiorari was attached to the bill of exceptions.

On the 11th day of September 1941, the Supreme Court of Georgia transferred the bill of exceptions to the Court of Appeals of Georgia, on the ground that the Supreme Court was without jurisdiction.

After argument, the Court of Appeals of Georgia affirmed the order of the Superior Court of Fulton County in overruling the certiorari, and in so doing, passed upon the constitutional questions raised by the petitioner in the Recorder's Court of the City of Atlanta, and in Fulton Superior Court. (See *Bunn vs. City of Atlanta* 19 S. E. 2d. 553.

A motion for re-hearing was filed by your peti-

tioner on the 28th day of March 1942 and was denied on 2nd. day of April 1942.

A petition for certiorari to the Supreme Court of Georgia was filed by your petitioner on 24th day of April 1942 and was, on 19th day of May 1942 denied by the Supreme Court of Georgia, the remittitur being sent to and filed in Court of Appeals of Georgia on June 1, 1942.

The Court of Appeals of Georgia, and the Supreme Court of Georgia have thus established as law in the State of Georgia a municipal ordinance which has deprived your petitioner of the rights and privileges guaranteed him under the Constitution of the United States and under the Constitution of the State of Georgia as is set out more fully hereinafter.

PART I.

The City of Atlanta and the State of Georgia have denied to petitioner his equal rights under the Constitution of Georgia, and under the Constitution of the United States, and he has been arbitrarily and unjustly discriminated against, in the following manner, to-wit:

(a) Petitioner has been subjected to an unreasonable, unjust and arbitrary licensing ordinance;

(b) The licensing ordinance under discussion is discriminatory and arbitrary in that it prohibits the exercise of a common, natural and inherent right of

an individual to conduct a business by contracting with other people to render service to them.

(c) The licensing ordinance under discussion is in violation of the Constitution of the State of Georgia, and in violation of the Constitution of the United States because it attempts to prohibit Negroes from transporting white people and white people from transporting Negroes.

(d) The licensing ordinance under discussion is unreasonable and is based on the theory set forth in the case of *Schlesinger vs. The City of Atlanta* 161 Ga., 148; 129 S. E. 861, that a city in granting permission to operate vehicles for hire on its streets is not bound in any rule of reason.

Each and every point set forth and here presented was properly raised, and argued, and decided in the Recorder's court of the City of Atlanta, in the Superior Court of Fulton County, in the Court of Appeals of the State of Georgia, and in the Supreme Court of Georgia.

The validity of the ordinance under which petitioner was convicted was drawn in question, and its validity was attacked by plea in the Recorder's court of the City of Atlanta, and the validity of this plea was properly re-urged on the hearing of the certiorari in the Superior Court of Fulton County, and was properly raised in the bill of Exceptions in the Court of Appeals of Georgia, and was properly raised in the certiorari in the Supreme Court of Georgia. This question is now properly before this Honorable Court.

PART II.

Petitioner has been deprived of his rights under Section I, paragraph 2 of the constitution of Georgia which declares "Protection to person and property is the paramount duty of Government and shall be impartial and complete" because

(a) An ordinance prohibiting Negroes from contracting with white people is not impartial.

(b) An ordinance prohibiting any class of persons from doing business with two-thirds of the population of the area affected by the ordinance is not impartial.

(c) An ordinance defining terms on which any trade may be carried on, must follow the terms of the constitution and must be impartial, and a prohibition which kept one-third of the population from soliciting the trade of the other two-thirds is not impartial.

PART III.

Petitioner has been deprived of his property right to earn a livelihood in violation of the 14th Amendment to the constitution of the United States because:

(a) The ordinance under discussion is arbitrary in that it goes outside of the discretion that a city council may exercise in that the discrimination would be a prohibition of the exercise of a common, natural and inherent right of an individual conducting a business to enter into contract with the general public.

(b) Because the Court of Appeals of Georgia and the Supreme Court of Georgia have held that a Municipality in granting permission to persons to operate taxicabs on its streets may prescribe unreasonable conditions, as a prerequisite to the use of the streets, and that individuals desiring to use the streets must comply with such conditions whether reasonable or unreasonable.

PART IV.

All of the questions raised above, were properly raised in the Recorder's Court of the City of Atlanta, in the Superior Court of Fulton County, in the Court of Appeals of Georgia, and in the Supreme Court of Georgia.

A substantial Federal question is presented in this petition, and it is before this court for review.

WHEREFORE Petitioner prays that an order granting this petition for writ of certiorari be entered, notifying the court of Appeals of Georgia of the granting of the petition, and that the certified transcript of all proceedings of the said Court of Appeals in the case entitled William Bunn vs. City of Atlanta No. 29330 transmitted herewith be treated as though sent up in response to a formal writ, to the end that the said cause may be reviewed and determined by this court, as provided in 28 U. S. C. A. 344 (b) that the said judgment of the Court of Appeals of Georgia and the judgment of the Supreme Court of Georgia in denying a certiorari on the judgment

of the Court of Appeals of Georgia may be reversed by this court, and that petitioner may have such other and further relief or remedy in the premises as this Honorable Court may deem appropriate.

Respectfully submitted

A. T. Walden
Stephens Mitchell
Attorneys for William Bunn,
Petitioner

BRIEF OF AUTHORITIES ON BEHALF OF THE PETITIONER:

The fundamental questions raised by this petition are:

I.

Is a Municipality, in making ordinances regulating the conduct of the business of operating motor vehicles for hire, bound by any rule of reason in making the ordinances?

From this question, if it be decided that they are so bound, flows the subsidiary question: Is an ordinance prohibiting Negro carriers from transporting white people for hire in a city in which two-thirds of the population is white so unreasonable a regulation

that it deprives petitioner of his constitutional rights?

The Supreme Court of Georgia has held that the case of *Schlesinger vs. City of Atlanta*, 161 Ga., 148,, is controlling in this case, and that case holds that:

"Individuals do not have the inherent right to conduct their private businesses in the streets of a city, and the State or City can prohibit the owners or operators of jitneys and busses from transporting passengers for hire in such vehicles upon the streets of a city."

And in the present case *Bunn vs. City of Atlanta*, 19 S. E. 2nd. 554 the court has held:

"If a city sees fit to grant permission to individuals to operate taxicabs or busses on its streets, it can prescribe such conditions as it may see fit, and individuals desiring to avail themselves of such permission must comply with such conditions whether reasonable or unreasonable.

A city ordinance requiring that taxicabs or automobiles for hire should bear a sign that the vehicle is for white passengers only or for colored passengers only and providing that no taxicabs shall be used to carry both white and Negro passengers, but

shall serve one race exclusively, does not deny "equal protection of law" or "due process of law." *Const. Ga. Art.* 1, Section 1, par. 2; U. S. C. A. Const. Amend. 14."

These decisions are directly against the principle of law laid down in *Buchanan vs. Warley*, 245, U. S. 81 where the court held:

"We think this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the state, and is in direct violation of the fundamental law enacted in the 14th Amendment of the Constitution preventing state interference with property rights except by due process of law. That being the case, the ordinance cannot stand. Booth vs. Illinois, 184 U. S. 425, 429, 46 L. ed. 623, 626, 22 Sup. Ct. Rep. 25; Otis v. Parker, 187 U. S. 606, 47 L. ed. 323, 327, 23 Sup. Ct. Rep. 168,"—and in headnote 4 of this case where the court held:

"A city ordinance which prevents the occupancy of a lot by a colored person in a block where a majority of the residences are occupied by white persons, thereby preventing white persons in such block from selling property therein to Negroes for residence purposes, is not a legitimate exercise of the police power of the state."

II.

The second question presented for determination is:

Is an ordinance prohibiting Negro operators of taxicabs and autos for hire from carrying white and Negro passengers in the same vehicle, and restricting

the use of any single vehicle to a single race, to the exclusion of the other race, a violation of the constitutional rights of a Negro operator of such a vehicle under that section of the constitution of the State of Georgia which provides that "Protection to person and property is the paramount duty of government and shall be impartial and complete?"

The answer to this is contained in the decision of the Supreme Court of Georgia in the case of *Chaires vs. City of Atlanta*, 164 Ga. 755, where the court held:

"The court did not err in enjoining the enforcement of so much of section 1 of the ordinance as prohibits colored barbers "from serving as barbers (white) children under the age of 14 years." This section is void, being in violation of those sections of the State and Federal constitutions which guarantee equal protection of the laws, inviolability of property rights, and due process of laws."

III.

Is the ordinance complained of in violation of the 14th Amendment to the Constitution of the United States, in that it would deprive the petitioner of a property right without due process of law?

If we follow the decision in the case of *Buchanan vs. Warley* set forth above, it is, and we may note that in the case of *Chaires vs. City of Atlanta*, 164 Ga. 767, the court said:

"In the case of *Coppage v. Kansas*, 236 U. S. 1 (35 Sup. Ct. 240, 59 L. Ed. 431, L. R. A. 1915C, 960), the Supreme Court of the United States used this language: "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

And in the case of *Butcher's Union etc. v. Crescent City etc.*, 111 U. S. 746, the court said:

"The right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; and among these are life, liberty, and the pursuit of happiness. This right is a large ingredient in the civil liberty of the citizen. Again, on page 764 (589), the learned justice said: "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States." And again, on page 765 (590): "But if it does abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does de-

prive him, to a certain extent, of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers; which as already intimated, is a material part of the liberty of the citizen."

Petitioner has been denied his rights under the Constitution of the United States and under the Constitution of the State of Georgia as set forth above and a substantial Federal question has thus been raised.

Respectfully submitted,

A. T. Walden
Stephens Mitchell

Attorneys for William Bunn,
Petitioner

(2)

SEP 30 1942
CHARLES ELMORE CROPL
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IN THE

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OCTOBER TERM, 1942

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WILLIAM BUNN, *Petitioner*,

Versus

CITY OF ATLANTA, *Respondent*.

BRIEF AND ARGUMENT BY RESPONDENT IN OPPOSITION TO GRANT OF THE WRIT.

J. C. SAVAGE,
E. L. STERNE,
J. C. MURPHY,
FRANK A. HOOPER, JR.,
Attorneys for Respondent.

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BRIEF AND ARGUMENT BY RESPONDENT IN OPPOSITION TO GRANT OF THE WRIT.

PART I.

MOTION TO DISMISS.

It will be noted that the petition for certiorari in this case alleges that the Supreme Court of Georgia ruled against the petitioner on May 19, 1942, and that appears to be the final ruling by the court of last resort in the State of Georgia in this case. Consequently, we submit that the petition for writ of certiorari should have been filed within ninety days of May 19, 1942. *U. S. Code Annotated, Title* 28, *Section* 350. *Citizens Bank of Michigan City vs. Opperman,* 249 *U. S., page* 447, 63 *Law Edition, page* 701.

PART II.

NO CONSTITUTIONAL RIGHT OF PETITIONER IS INVOLVED.

Petitioner evidently proceeds upon the theory that he has a constitutional property right or franchise right to use the streets of the City of Atlanta for his own private business in such manner as he sees fit, and that for the City of Atlanta to seek to regulate his use of its streets deprives him of a constitutional right.

We submit in the first place that petitioner does not have any property rights in and to the use of the streets of the City of Atlanta for purpose of carrying on his private business. If this court upholds the ruling by the Supreme Court of Georgia in the case of *Schlesinger vs. City of Atlanta,* 161 *Ga.,* 148, that would conclude any further consideration of this case.

If, on the other hand, this court should reverse the ruling in the case of *Schlesinger vs. City of Atlanta, Supra,* that would bring us next to a consideration of the question as to whether or not the Ordinance involved in this case was or was not void.

PART III.

THE ORDINANCE IN QUESTION IS NOT VOID FOR ANY REASON ASSIGNED.

The attacks made on this Ordinance will be taken up seriatim in the same order as presented in the petition for writ of certiorari.

In Part One (c) of said petition, it is contended that the Ordinance attempts to prohibit negroes from transporting

white people and white people from transporting negroes. The pleadings in the court below, as pointed out in the decision by the Georgia Court of Appeals, makes it clear that the City of Atlanta does not rely on so much of the Ordinance as would seek to accomplish the foregoing and therefore, it is not an issue in this case.

In Part Two (a) it is contended that the Ordinance prohibits negroes from contracting with white people. The Ordinance does not do so, and any portion thereof which would seek to do so is not insisted upon by the City of Atlanta. The Ordinance allows negroes to haul white people, and white people to haul negroes.

The Ordinance does not, as contended in Part Two (b), prohibit any class of persons "from doing business with two-thirds of the population of the area affected." It permits colored people to haul white people in their vehicles, or to haul colored people, as they desire. The only limitation is that there shall be segregation of white and colored as to the individual vehicles used.

Part Two (c) is covered by our discussion of Part Two (a) above.

Part Three (a) contends that the Ordinance is "a prohibition of the exercise of a common, natural and inherent right of an individual conducting a business to enter into contract with the general public." A careful reading of the Ordinance will disclose that it does not prohibit a licensee from entering into contract with the general public, but only requires segregation of the races.

Part Three (b) contends that the Georgia Courts permit a municipality to prescribe unreasonable conditions for use of its streets. That is true. We submit, however, that the conditions in this case imposed are reasonable.

PART IV.

SEGREGATION FEATURES OF THE ORDINANCE IN QUESTION ARE REASONABLE.

This Ordinance was passed by the City of Atlanta under its police powers. When boiled down to its essential provisions, the Ordinance required the licensee to dedicate each licensed vehicle to the use of hauling either white or colored, to indicate the same on the side of the vehicle, and to use each vehicle for hauling either white or colored as the permit specified.

The Ordinance is therefore, simply an exercise of the police power by the City in the regulation of transportation of the public for hire upon its streets. Such segregation seems to have been uniformly upheld.

> "The state has power, for the safety of the public, to regulate the use of its public highways, and may prohibit on condition as it deems proper, the use of city streets as a place for the carrying on of private business." *Hodge Drive It Yourself Company vs. City of Cincinnati,* 284 *U. S.,* 335, 76 *Law Edition,* 323."

Among cases upholding segregation of the races in railway coaches we refer to *McCabe vs. Atchison, Topeka and Santa Fe Railway Company,* 235 *U. S.,* 151.

As to segregation of white and colored in private colleges see *Berea College vs. Commonwealth of Kentucky,* 211 *U. S.* 45.

In the case last cited this court held that "the right to teach white and negro children in a private school at the same time and place is not a property right."

As to the right of a state to segregate pupils in schools we refer to *Gong Lum vs. Wright,* 275 *U. S.,* 78.

We submit, therefore, that even though this court should hold that the regulations imposed upon applicants for permit must be reasonable and constitutional, and that such applicants have a property right which must be thus protected, the Ordinance in question was a reasonable and valid Ordinance.

Segregation of the races is much more important in a small vehicle which carries three or four passengers, than in the case of a coach on a railroad. During crowded hours, unless one of these vehicles were labeled for either white or colored, there could easily be a scramble by both white and colored seeking to engage the vehicle, which could easily result in a breach of the peace.

We respectfully submit that the prayer for the certiorari should be denied.

J. C. SAVAGE

E. L. STERNE

J. C. MURPHY

FRANK A. HOOPER, JR.

Attorneys for Respondent.

(3)

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VERSUS

CITY OF ATLANTA,

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MOTION FOR RE-HEARING
ON
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HAL LINDSAY
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Movant.

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MOTION FOR RE-HEARING

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SUPREME COURT OF THE UNITED STATES

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MOTION FOR RE-HEARING ON PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Now comes William Bunn, plaintiff in certiorari, and moves for a re-hearing on the application for certiorari in the above case on the following grounds:

The order denying the petition for writ of certiorari reads:

> "The petition for writ of certiorari is denied on the ground that it does not appear from the record that application therefor was made within the time provided by law. Section 8(a), Act of February 13, 1925 (43 Stat. 936, 940), 28 U. S. C., Section 350."

Your petitioner contends that the section cited in the order denying the application has no bearing.

Petitioner contends that the question for determination is "Has this certiorari been filed too late?".

In answer to the question "Has this certiorari been filed too late?", we must examine the Georgia law.

(1) This certiorari is from the decision of the Georgia Court of Appeals.

(2) The decision from which the actual appeal was taken was rendered on the 20th day of March, 1942.

(3) But, under the rules regulating certiorari this decision could not be the subject of certiorari to this Court.

(4) Under these rules a certiorari must be taken to the Supreme Court of Georgia.

(5) This certiorari was taken, and the certiorari was overruled May 19th, 1942.

(6) The remittitur from the Supreme Court of Georgia, denying the application for writ of certiorari to the judgment of the Court of Appeals of Georgia, was filed in the office of the Clerk of the Court of Appeals on June 1st, 1942.

(7) Is the present action a certiorari on the certiorari which was overruled May 19th, 1942? Obviously not, for it is directed to the *Court of Appeals* of Georgia and seeks to review the decision rendered on the 20th day of March, 1942.

Up until that time no certiorari was possible for

(a) No certiorari can be taken from the Court of Appeals of Georgia until a certiorari has been denied by the Supreme Court of Georgia.

(b) The writ of certiorari in this case is not directed to the Supreme Court of Georgia, but to the Court of Appeals, and until decision of the Supreme Court of Georgia is made the judgment of the Court of Appeals of Georgia there is nothing on which a certiorari can be based.

And this is particularly true in the present case, where the decision of the Supreme Court of Georgia held that it had no original appellate jurisdiction over this case, but that jurisdiction was in the Court of Appeals of Georgia. But due to technical rule set forth above, it could not be reviewed in this court until the Supreme Court of Georgia had overruled a certiorari.

Now, at what date did the decision of the Supreme Court of Georgia become the judgment of the Court of Appeals of Georgia?

It became the judgment of the Court of Appeals on the day that the remittitur from the Supreme Court to the Court of Appeals was entered on the docket of the Court of Appeals, said date being June 1st, 1942. (Page 21 of the Transcript of Record.)

When the remittitur was entered there was a judgment from which plaintiff in certiorari could

bring certiorari to the Supreme Court of the United States.

The law in Georgia as to remittitur is stated in *Parker vs. Gortatowsky*, 129 Ga. 626, as follows:

> "The suit . . . was not at an end before the remittitur was filed, at least. Perhaps entering judgment on it may not have been the duty of the losing party. The announcing of the decision of the Supreme Court did not close the record. So that, before it was ended, the effort to recover the property by dispossessory proceeding was premature."

And in the case of *Hubbard vs. McCrea*, 103 Ga. 680, the Court held:

> "When a case has been brought to this court from a final judgment of a trial court, the latter has no jurisdiction to proceed with a new trial of the case until after the remittitur from this court has been entered upon the minutes of the lower court and made the judgment thereof."

For these reasons plaintiff in certiorari contends that until the decision of the Supreme Court of Georgia was by remittitur made the judgment of the Court of Appeals of Georgia, on June 1, 1942, there was nothing from which he could certiorari, and that he did bring his certiorari within ninety (90) days from the time when the judgment of the Supreme Court of Georgia was entered by remittitur on the docket of the Court of Appeals of Georgia.

WHEREFORE, Plaintiff in Certiorari submits that the order denying the writ of certiorari should be reconsidered and rescinded and said petition for certiorari considered on its merits.

Respectfully submitted,

Hal Lindsay

Stephens Mitchell

A. T. Walden

ATTORNEYS FOR WILLIAM BUNN,

APPLICANT FOR WRIT OF CERTIORARI.

GEORGIA, FULTON COUNTY.

I, Hal Lindsay, do hereby certify that I have written and filed the foregoing application for ~~certiorari~~ certiorari, in the case of Bunn versus The City of Atlanta in good faith, and not for delay.

Hal Lindsay

Sworn to and subscribed before me

this 11th day of November, 1942.

R. E. Pruden

Notary Public, Ga. State at Large.
Atlanta, Ga.
My commission expires Aug. 7, 1943.